**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**
**Civil Application No. 2313 of 2006**
**In**
**First Appeal No.1061 of 2006.**

Municipal Corporation of Gr.Bombay. Applicant.

Vs.

Jyoti J. Songappa. ..Respondent.

Shri. K.K.Tated i/b Mulla & Mulla Associate.

M.B. Kotak for Respondent No.1.

**CORAM: S.B.DESHMUKH,J.**
**DATED: 12/9/06.**

**P.C.:-**

1] Heard the learned Counsel for the Parties.

2] By this Civil Application the Applicant is seeking stay to the execution of Judgment and Award passed in M.A.C.P. No. 681 of 2002 by Motor Accidents Claim Tribunal.

3] The learned Counsel for the Applicant, submits, that in case the Respondents are permitted to withdraw the entire amount of compensation, Appeal admitted by this Court, in due course of time, if allowed, the Applicant could be in difficulty to recover

the amount of compensation from the Respondents/Original Claimants.

4] The learned Counsel for the Respondents submits that Respondent No.1 is widow, has to maintain two minors and mother-in-law who is 60 years old on the date of filing of the Application. According to him, the Respondent No.1/widow, is not having any source of income and therefore, she seeks withdrawal of the amount of compensation awarded by the Trial Court.

5] Having heard the learned Counsel for the Parties, in my view, the Judgment and Award passed by the Lower Court can be stayed and part of amount of compensation also can be permitted to be withdrawn by the Respondents by filing undertaking of Original Claimant/Respondent No.1 namely Smt.Jyothi J. Songapaga and Smt.Kurmama Chanappa Songapaga for the amount to the extent of 50% of amount of total compensation deposited by the Applicant in the Trial Court. The remaining 50% amount of compensation can be directed to be deposited with any Nationalized Bank by the

Tribunal, initially for a period of seven years and in the absence of any order from this Court said investment shall stand renewed for three years every time.

6] In this view of the matter, Civil Application is partly allowed. The Judgment and order passed by the Tribunal in M.A.C.P.No. 681 of 2002 shall stand stayed till disposal of the Appeal on condition that the Applicant shall deposit the entire decretal amount in the Trial Court within a period of six weeks from today. The deposit of the amount is made condition precedent. Meaning thereby in case of failure on the part of the Applicant to deposit the entire decretal amount in the Trial Court within a period of six weeks from today, the stay granted by this Court shall stand vacated.

7] The Respondent/Original Claimants are permitted to withdraw 50% amount of compensation on personal undertaking to be filed in the Tribunal of Original Applicant No.1 Smt. Jyoti J. Songapaga and Smt. Kurmama Songapaga and the learned Tribunal is

also directed to invest remaining 50% amount of compensation with any Nationalized Bank, initially, for a period of seven years and in the absence of any order from this Court shall stand renewed for three years every time.

8] The Civil Application is accordingly allowed and disposed of in the above terms.

9] The learned Counsel for the Applicant submits that an amount of Rs. 25,000/- towards statutory deposit under Section 171 of the Motor Vehicles Act, deposited by the Applicant, in this Court, be remitted to the Tribunal. The learned Counsel for the Respondent has no objection. In this view of the matter, Registry is directed to remit an amount of Rs.25,000/- deposited by the Applicant in this Court to the Tribunal concerned.

**[S.B.DESHMUKH,J]**